

ESTTA Tracking number: **ESTTA1403**

Filing date: **06/12/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	VPI Holding Co.
Granted to Date of previous extension	06/12/2013
Address	200 Swisher Road Lake Dallas, TX 75065 UNITED STATES
Party who filed Extension of time to oppose	Yoga Pura Enterprises, Inc.
Relationship to party who filed Extension of time to oppose	Opposer, VPI Holding Co., acquired all right, title and interest in Registration No. 3937622, and all common law rights in the mark LIVE HAPPY from Yoga Pura Enterprises, Inc. The assignment document conveying these rights is recorded with the Assignment Division of the Trademark Office at Reel/Frame 5027/0621

Attorney information	Lisa R. Hemphill Gardere Wynne Sewell LLP 1601 Elm Street, Suite 3000 Dallas, TX 75201-4761 UNITED STATES ip@gardere.com, lhempfill@gardere.com, jballard@gardere.com Phone:214.999.4682
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Applicant Information

Application No	85738391	Publication date	02/12/2013
Opposition Filing Date	06/12/2013	Opposition Period Ends	06/12/2013
Applicant	GP Global Limited 1031 Le Grand Blvd. Charleston, SC 29492 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Body lotion; Body oil; Body wash; Face and body lotions; Perfume

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3937622	Application Date	07/27/2010
Registration Date	03/29/2011	Foreign Priority Date	NONE
Word Mark	LIVE HAPPY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/08/31 First Use In Commerce: 2006/08/31 Retail store and online retail store services featuring clothing, home décor, exercise and fitness supplies, meditation supplies, jewelry, body products and lotions, candles, books, videos and music		

Attachments	VPI Holding Co. Not of Opp against 85738391.pdf(45481 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lisa R. Hemphill/
Name	Lisa R. Hemphill
Date	06/12/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

VPI HOLDING CO.)	
)	
Opposer,)	OPPOSITION NO.
)	
vs.)	_____
)	
)	Application Serial No. 85/738,391
)	
)	Opposed Mark:
)	LIVE HAPPY, LIVE HEALTHY
)	
GP GLOBAL LIMITED)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Filed Electronically Via ESTTA
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

This matter relates to an application for trademark registration, Serial No. 85/738,391, filed by GP Global Limited ("Applicant") in connection with goods in Class 3, which application ("Opposed Application") was published on page TM 472 of the Official Gazette of the United States Patent and Trademark Office on February 12, 2013. VPI Holding Co., ("Opposer"), believes that it would be damaged by the grant of registration of such application, and hereby opposes the registration of the mark of such application.

As grounds for such opposition, it is alleged that:

1. Opposer, VPI Holding Co., a Delaware corporation, is organized under the laws of the United States with a business address of 200 Swisher Road, Lake Dallas, TX 75065.
2. Applicant, GP Global Limited, a United Arab Emirates corporation, has a business address of 1031 LeGrand Blvd., Charleston, South Carolina 29492.

3. Applicant seeks to register the mark “LIVE HAPPY, LIVE HEALTHY” (hereinafter “Applicant’s Mark” or the “Mark”), as a trademark for body lotion, body oil, body wash, face and body lotions; perfume (“Applicant’s Goods”).

4. Applicant filed U.S. Trademark Application Serial No. 85/738,391 on September 25, 2012 seeking to register Applicant’s Mark.

5. Applicant’s application was filed based on intent to use the mark in commerce.

6. On information and belief, Applicant was not using the Mark in commerce on the goods listed in the application as of the application filing date and still has not made use in commerce, and is not otherwise entitled to a priority date prior to September 25, 2012, the filing date of Opposed Application.

7. Beginning from a date long prior to any priority date by which, upon information and belief, Applicant can rely, and continuing to the present time, Opposer has used, by and through its predecessor in interest, since at least as early as August 31, 2006, the mark LIVE HAPPY for retail store and online retail store services featuring body products and lotions, among others.

8. Opposer is the owner of, and will rely on herein, the following valid and subsisting United States service mark registration, Registration No. 3,937,622 for the mark LIVE HAPPY for retail store and online retail store services featuring clothing, home décor, exercise and fitness supplies, meditation supplies, jewelry, body products and lotions, candles, books, video and music.

9. Opposer’s LIVE HAPPY mark has not been, nor has it ever been, abandoned.

10. In view of Opposer’s prior use of the mark in connection with retail store services, Opposer has priority in the LIVE HAPPY mark.

11. Opposer has and will also assert its common law rights resulting from its ownership and use of its LIVE HAPPY mark in connection with various services. Such marks

include various prior trademarks and service marks which have been valid and continuous since a date prior to the filing date of the Opposed Application, prior to the claimed priority date, and upon information and belief, prior to any first use of Applicant's Mark on or in connection with Applicant's Goods.

12. Opposer's predecessor in interest has established a valuable reputation and goodwill in the LIVE HAPPY mark by reason of its continuous use, promotion and sale of goods and services utilized in association with its LIVE HAPPY mark.

13. Opposer's LIVE HAPPY mark has been used and advertised such that it has come to indicate to the relevant trade and consumers, retail store services including, among other things, various body lotions, having as the source of origin as being connected with the Opposer's predecessor in interest and now licensee.

14. Applicant's Mark, "LIVE HAPPY, LIVE HEALTHY" as proposed for registration is substantially similar to Opposer's LIVE HAPPY mark.

15. The goods for which Applicant seeks to register are directly related to the services for which Opposer uses and has registered its LIVE HAPPY mark.

COUNT I

LIKELIHOOD OF CONFUSION – 15 U.S.C. 1052(d)

16. Opposer repeats and realleges each and every allegation set forth in the paragraphs 1 through 15 herein.

17. Applicant's Mark so resembles Opposer's LIVE HAPPY mark, when used on or in connection with the goods of Applicant, as to be likely to cause confusion, or to cause mistake, or to deceive, thereby to Opposer's damage.

18. Applicant's Goods are similar to and/or related to those goods offered by Opposer through its retail and online retail store.

19. It is likely that consumers will mistakenly believe that Applicant's Goods emanate from the same source as Opposer's retail store services and online retail store services.

COUNT II

No Bona Fide Use of the Mark

20. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 19 herein.

21. Upon information and belief, Applicant has made no bona fide use of its Mark in commerce for the goods set forth in Applicant's Application, and therefore, has no priority claim earlier than the filing date of the Opposed Application.

WHEREFORE, Opposer prays that Applicant be required to answer this Notice of Opposition; that upon hearing, said application Serial No. 85/738,391 be ordered withdrawn; that registration of the mark therein disclosed be refused, and that Opposer have such other and further relief as may be deemed to be just and proper.

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

Dated: June, 12, 2013

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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served via first class mail, postage prepaid, to the Owner of record, GP Global Limited, and via first class mail and via email to the attorney of record, James P. Broder, at the address indicated below:

Owner:
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Charleston, South Carolina 29492

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Date: June 12, 2013

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